



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

MEMO ENDORSED.

May 25, 2023

VIA ECF

Honorable Ona T. Wang
United States Magistrate Judge
United States District Court
500 Pearl Street
New York, NY 10007

Re: *The New York Times Company, et al. v. Central Intelligence Agency, et al.*,
23 Civ. 1854 (KPF)

Dear Judge Wang:

The parties to the above-referenced Freedom of Information Act litigation submit this letter to inform the Court of the status of the case, as required by the Court's Initial Case Management Conference Order, dated April 24, 2023 ("April 24 Order") [ECF No. 16]. Counsel for defendants Central Intelligence Agency ("CIA"), Department of State ("State"), and the Office of the Director of National Intelligence ("ODNI") (collectively, "Defendants" or the "Government") have conferred with counsel for plaintiffs The New York Times Company and Charlie Savage (collectively, "Plaintiffs"), who join in this letter. Pursuant to the Court's April 24 Order, an initial pretrial conference for this case is scheduled for June 6, 2023, at 3:00 p.m. Given the current case status as described below, the parties respectfully request to be relieved of the obligation to submit a proposed Civil Case Management Plan pursuant to Fed. R. Civ. P. 26(f) and the April 24 Order, and also request that the scheduled conference be adjourned without date. If the Court wishes to see the parties for any reason, however, we are more than happy to attend.

Plaintiffs have brought this action under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* ("FOIA"), to obtain an order for the production of certain agency records from CIA, State and ODNI. Since the filing of the Government's answer to the complaint on April 6, 2023 [ECF No. 13], the Government and Plaintiffs have discussed and agreed upon narrowing the scope of plaintiff Charles Savage's September 27, 2022 FOIA request (the "FOIA Request"), which requested the following from all three agencies:

"[A]ll records related to requests for briefings by former presidents since 1953, including but not limited to: the identity of the ex-president, the date of the request, the topic, any context or justification for the request, whether such a briefing was provided, why it was not provided if it did not happen, and for those that did happen: the dates, location, classification levels and any written records related to the content as well as to any follow-up questions and answers."

On May 3, 2023, the Government agreed to conduct searches for the following revised FOIA request (“Revised FOIA Request”) proposed by Plaintiffs: “Records from the Ford Administration onward of briefings given to then-former presidents (including briefings in-person, by writing, or by phone), including briefings provided as a courtesy to the then-former president by request, as well as briefings provided in connection with a government assignment.” To date, CIA, State and ODNI have begun the search process in connection with the Revised FOIA Request. Upon completion of their searches, each agency will be in a position to assess its respective volume or nature of potentially responsive records.

Based on the foregoing, and because this is an action brought under FOIA, where civil discovery is “rare,” *see Ferguson v. U.S. Dep’t of Educ.*, 09 Civ. 10057, 2011 WL 4089880, at *14 (S.D.N.Y. Sept. 13, 2011) (citations omitted), the parties respectfully request to be relieved of the obligation to submit a proposed Civil Case Management Plan under the Court’s current deadline of May 30, 2023. The parties also request that the initial conference scheduled for June 6, 2023 be adjourned without date. The parties propose that, beginning on June 30, 2023, and for every 30 days thereafter, the parties will submit to the Court a joint status letter to inform the Court of the status of the Government’s searches for and processing of any potentially responsive records, and/or to present any areas of dispute which the parties have not been able to resolve consensually and that may require judicial resolution.

We thank the Court for its consideration of these requests.

Application **GRANTED**. The Initial Case Management Conference and corresponding deadlines are **ADJOURNED** sine die. The parties shall file a monthly joint status letter on the last business Friday of each month beginning **June 30, 2023**.

SO ORDERED.



Ona T. Wang 05/26/2023
U.S.M.J.

Respectfully,

DAMIAN WILLIAMS
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cc: All Counsel of Record (via ECF)